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December 28, 2011

Donald S. Clark
Federal Trade Commission
Office of the Secretary
Room H-113 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Alcohol Reports: Paperwork Comment;
Project No. P114503

Submitted electronically at:
<https://ftcpublic.commentworks.com/ftc/alcoholstudy2011pra2>

Dear Mr. Clark:

The Center on Alcohol Marketing and Youth (CAMY) at the Johns Hopkins Bloomberg School of Public Health submits the following comments in response to the Commission's proposed collection of information from alcohol advertisers regarding, among other things, sales and marketing expenditures, compliance with voluntary advertising placement provisions, digital marketing practices and data collection, and lesser-known media programs.

These comments supplement those that we submitted earlier this year (attached to this letter as well). The media landscape continues to change rapidly, and we are concerned that the Commission's monitoring activities will not be able to keep up. Diageo recently announced a \$10 million deal with Facebook; Heineken also announced a substantial agreement with Facebook to buy "consulting and early access to new products;" Heineken previously announced it had agreed to advertise on Google platforms such as YouTube (which has no age restrictions) "in return for consulting, audience targeting and joint research projects." (E.J. Shultz, "Heineken Strikes Deal with Facebook: 'Consequential New Pact is for Consulting, Product Access,'" *Ad Age*, December 7, 2011) Twitter, another outlet with no age verification or affirmation process, announced that Heineken will be one of its 21 new "partners" as that outlet experiments with re-designed new "brand pages."

We continue to consider the information to be collected by the Commission critical to FTC's performance of its regulatory responsibilities, and encourage the Commission to increase both its scrutiny of alcohol marketers and its efforts to encourage the industry to comply with both the FTC's earlier recommendations (see below) and the recommendations of bodies such as the National Research Council and Institute of Medicine.

The following comments refer to the November 2011 Summary of Proposed Specifications:

1. Specification 2

Specification 2 outlines the collection of data regarding advertising and promotional expenditures. The digital media categories included in this are: "company-sponsored Internet sites; other Internet site advertising; other digital advertising." We encourage the Commission to include explicitly in the second category payments to third-party ad networks which often serve as intermediaries between brand marketers and websites (publishers) that wish to provide advertising space (ad inventory); expenditures for staffing and developing content for company-sponsored social media outlets such as Facebook, YouTube, Twitter, Foursquare, Tumblr, Posterous, Blogger, WordPress, BuzzFeed, Pandora, Flickr, and MySpace; as well as expenditures for developing and implementing smartphone applications, blogger outreach programs and blog sponsorships, and other expenditures not generally considered "advertising" in a traditional sense but crucial to marketing in the digital space. Otherwise, the Commission will run the risk of obtaining underestimates of spending in this area because its requests will only or primarily capture company-placed display advertising, a small component of company marketing activity in digital media.

2. Specification 3

The Commission is proposing to collect information on ads that "primarily targeted" Hispanic or African-American consumers. The specification needs to define the term "primarily targeted." Will this definition include only "direct targeting" (that is, targeting by intent) or will it also include "indirect targeting" as defined in *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (No. GIC 764118 [Cal. Super. Ct. June 6, 2002], *aff'd*, 107 Cal. App. 4th 516 (Cal. Ct. App. 2003): "...when there is no direct evidence of intent to target, but nevertheless a group other than the group directly targeted is reached in a measurable way similar to the group directly targeted"? We urge the Commission to use some version of this as its working definition, so that the information will encompass any campaign that results in over-indexed exposure to these populations, that is, that exposes them to greater amounts of advertising than either the general public or non-African American or Hispanic peers of their age group.

3. Specification 4

The Commission proposes to collect information about digital marketing practices "on company-owned or -operated websites" and "from other Internet sites and other digital advertising that is not company-owned or operated." Again, we encourage the Commission

to include in this company-operated or generated social media pages and feeds through venues such as Facebook, YouTube, Twitter, Foursquare, Tumblr, Posterous, Blogger, WordPress, BuzzFeed, Pandora, Flickr, MySpace, and other third party sites where alcohol companies are active providers of content for the purposes of marketing their products.

The Commission should inquire not just what mechanisms companies use to deter persons under 21 from entering or accessing content on these sites, but also what forms of third-party age verification (as opposed to age affirmation by the user themselves) are in use. "Age affirmation" is unenforceable by the companies or anyone else, and therefore essentially meaningless in this context. Since the companies increasingly describe marketing in this venue as providing an experience rather than doing traditional advertising, a higher level of scrutiny, analogous to that used when minors seek to enter real-world drinking experiences such as bars, is relevant to this virtual drinking experience. Furthermore, it is our understanding that one or more of the major tobacco companies appears to employ third party age verification technologies that far surpass anything currently used by the alcohol industry, demonstrating that it can be done.

Further to these comments on the specifications, we continue to believe that there are crucial omissions from the Commission's data requests. Specifically:

- 1) What are company policies regarding user-generated content on their social media sites? How frequently do they monitor the sites and remove inappropriate content? The DISCUS guidelines suggest that companies do so every business day and at least every five business days – are companies complying with this requirement?
- 2) What are company policies regarding third-party use of trademarked content in digital media, and how and how often are these policies enforced?
- 3) The Commission's landmark 1999 report contained the following recommendations, based on best practices in place in the industry at that time:
 - *For ad placement:* Maintain "no buy" lists barring placement on TV series and in other media with the largest underage audiences, and conduct regular after-the-fact audits of a sample of past placements to verify that past ad placements were in compliance.
 - *For ad content:* Raise the content standard by barring ads with substantial appeal to underage consumers, even if they also appeal to adults, or by targeting ads to persons 25 and older.
 - *For product placement:* Reduce the likelihood that alcohol product placement will occur in media with substantial underage appeal by restricting movie placements to films rated "R" or "NC-17" (or unrated films with similarly mature themes), prohibiting placements in films where an underage person is a primary character, and applying the standards for placing traditional ads to product placement on TV.

To our knowledge, these recommendations have never been implemented by the industry as a whole, although they may be in place from specific companies. The Commission

should specifically inquire whether the companies have complied with these recommendations, and should include in the “other media with the largest underage audiences” category under the first bullet above whether the companies maintain any such no-buy lists for social and digital media sites. Regarding the second bullet, the Commission’s 2008 report indicates that companies are defining their target audiences as “adults 21-25” or “adults 21-29” (2008 Report, Footnote 91), indicating that companies are not complying with this recommendation.

Thank you for your consideration of our comments. If you have any questions, please feel free to contact the Center on Alcohol Marketing and Youth at 410-502-6579.

Respectfully submitted,

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Associate Professor and Director,
Center on Alcohol Marketing and Youth

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